

HISTORY OF ENFORCEMENT ACTION

NWW No. 022201080
Water District No 37 & 37M
28 August 2002

1. The location of a portion of the present work in Silver Creek, immediately upstream of the Highway 93/26 Bridge, was the subject of an earlier application for permit by Mr. Lee Peterson, Watermaster, Water District No. 37 & 37M, Shoshone, Idaho, dated 25 October 25, 2000 (NWW No. 012200320). Mr. Peterson sent this application to the Idaho Department of Water Resources (IDWR) for a permit to discharge grass and sod along two sections of Silver Creek on the east side of the stream. These two areas were proposed to be 15-feet and 150 – 200-feet long, respectively. The areas to be filled were low areas where Silver Creek discharged from the main stream into a series of wetlands adjacent to Silver Creek and where a discharge (tributary) stream channel had developed transporting water a distance of approximately 1,135 linear feet into basalt sinks located to the east.

Mr. Peterson did not apply for a permit directly to us, however, IDWR provided us a copy of Mr. Peterson's application. On November 30, 2000, I wrote Mr. Peterson a letter requesting additional information about his project. On 17 January 2001, after not receiving the information I had requested from Mr. Peterson, I called Mr. Peterson and asked about his progress with our request. Mr. Peterson stated that he "did not need it anymore" and requested that we withdraw the application. I did so and forwarded a letter to that effect to Mr. Peterson on January 17, 2001.

2. On June 28, 2002, I received a telephone voice-mail message from Terry Blau (IDWR, Southern Region) and an e-mail with photographs attached, of work that had taken place on both sides of Silver Creek. Some of the work had taken place at the same location as specified in Mr. Peterson's withdrawn application. The work on the west side of Silver Creek was new and the work on the east side of Silver Creek appeared to be older as evidenced by a full growth of first-year, annual vegetation.

Mr. Blau provided additional information and a field report (completed by Mr. Kelly Wright of IDEQ) indicating that Mr. Lynn Harmon, Manager, Big Wood Canal Company, Shoshone, was found working on at the site when Mr. Blau and Mr. Wright arrived. Mr. Blau photographed the equipment found on the site during their visit and provided those photographs to us.

3. On July 12, 2002, Ms. Carla Fromm (EPA), Mr. Blau and the undersigned met at the site to survey and assess the work completed. We found work had been done on both sides of the stream, in the stream and in wetlands adjacent to both sides of the stream. The work originally covered in Mr. Peterson's withdrawn application, i.e., the discharge of material into wetlands and into the "tributary" channel leading to the "sinks" had been completed. In addition, approximately 1,200 linear-feet of wetlands had been filled and dredged material discharged into Silver Creek in a number of locations on the west side of the stream. Mature willows located along Silver Creek's banks had been destroyed and the remnants of these plants, mixed with dredged material, were piled in the wetlands along the length of the disturbed area. Existing

passageways for water to enter the adjacent wetlands were now filled and the wetlands on both sides of Silver Creek (approximately 163 acres) could be converted to upland due to the work that had been done. The extent of wetland damage is currently unknown, since groundwater may play a part in wetland hydrology along with the surface water that, at one time, entered the area from Silver Creek.

Dredged material has been discharged below the ordinary high water mark of Silver Creek along approximately 1,700 linear-feet at various locations. A portion of this area measuring approximately 515-linear feet had no work done (see violation drawings, Sheets 1, through 15, dated 18 July 2002). Brush, limbs, root balls and dredged material has been piled along the length of the stream in wetlands. Additional fill has been discharged in wetlands on the east side of Silver Creek as described above. See photographs Nos. 1 through 35, dated 12 July 2002. Filled areas discovered at the site are summarized in the tables below.

The following tables indicate the extent of fill along the linear dike feature:

Brush fill refers to the discharge of limbs, root balls, dredged material and debris piled in a single location.

Brush Fills

<u>Discharge No.</u>	<u>Location (CL)</u>	<u>Sq. Ft. Filled</u>
2	2+58	425
4	3+00	840
7	4+18	192
8	4+20	420
11	5+43	625
13	6+48	396
17	7+34	390
22	9+10	210
24	9+47	420
27	10+40	432
Total		4,250 Sq. Ft. (0.10 acre)

The term "dredge discharge" refers to large discharges of material dredged from the adjacent wetlands and discharged against the side of the dike, apparently, to bolster the dike from the inside away from the stream.

Dredge Discharges

<u>Discharge No.</u>	<u>Location (Begin)</u>	<u>Sq. Ft. Filled</u>
9	4+34	1932
12	5+63	994
14	6+56	828
16	7+26	320
18	8+00	315
20	8+69	460
23	9+17	275
25	9+67	405
<hr/> Total		5,529 (0.13 acre)

Wetland fills include discharges of dredged material into wetlands adjacent to Silver Creek and into Silver Creek (presumably to plug up holes piping water under the dike - some of the dredged material came from Silver Creek).

Wetland Fills

<u>Discharge No.</u>	<u>Location (Begin)</u>	<u>Sq. Ft. Filled</u>
5	3+58	315
6	3+85	520
10	4+44	345
15	7+00	1060
19	8+28	252
28	10+95	220
29	16+15	455
1 (East side fill)	0+00	40
21 (East side fill)	9+00	3,900
<hr/> Total		7,107 (0.16 acre)

A total of 1.098 acres, including the wetland impacts outlined in the tables above and wetland fills associated with dike construction (estimated to be approximately 0.597 acres on the west side and 0.111 acres on the east side) of jurisdictional wetland have been impacted directly over and above the approximately 163 acres of wetland that could be indirectly impacted as a result of the work. Discharges into Silver Creek, although more difficult to determine, are estimated at a total of 1.45 cubic yards of dredged material with irregular distribution on the bottom of Silver Creek (IDEQ Memorandum, dated August 9, 2002, Dr. Balthasar B. Buhidar, Ph.D.)

4. On 22 July 2002, I called Mr. Lee Peterson, Water District No. 37 & 37M, to discuss the work done at Silver Creek. I left a message on his answering machine. Mr. Peterson called me back while I was on the phone and left a message telling me he would be in the office the next day.

5. On 22 July 2002, I called Mr. Lynn Harmon, Manager, Big Wood Canal Company, who was identified by Messrs. Blau and Wright to have been operating an excavator at the work site on Silver Creek on 28 June 2002. Mr. Harmon stated that Mr. Peterson, of the State Water Resources Department had asked him to clean up and finish up work that had been completed earlier in the year by others and had done about half of all work completed. Mr. Harmon stated that he dredged material and placed it on the new work to "dress it up." I asked Mr. Harmon who had done the earlier work prior to his arrival and he stated he thought it was Nick and Bud Purdy, but he did not know for sure. Mr. Harmon stated that Mr. Peterson acted as the supervisor for the entire project and that Mr. Peterson was concerned about water loss out of Silver Creek at this site. Mr. Harmon stated that he did not work above the "fence" (referring to the location where a cross-fence is located at about Station No. 11+00 on our drawings, dated 18 July 2002). Mr. Harmon stated that he worked on the west side of the stream only. In answer to my question, Mr. Harmon assured me that he would not do any additional work at this location.

6. Mr. Peterson's Prior Involvement With The Regulatory Program and Section 404 of the Clean Water Act:

Mr. Peterson has submitted other applications for permit in the past to us for work he had planned to do on the Little Wood River near Shoshone, Lincoln County, and in the Big Wood River near Stanton Crossing on Highway 20, Blaine County. The Shoshone application involved the installation of a measurement weir on an existing concrete dam (NWW No. 920202790) which was eventually the subject of Mr. Peterson's Section 404 violation (NWW No. 930200610) for discharging unconsolidated fill material into the Little Wood River for a temporary dam and for removing it by cutting a "notch" in the center of the fill and allowing the current to flush the fill downstream. Mr. Peterson's application for work in the Big Wood River

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(NWW No. 992200100) involved the proposed channelization of a portion of the Big Wood River to allow the installation of a measurement weir on Willow Creek, a tributary to the Big Wood River at the location of the proposed work. Mr. Peterson eventually withdrew this application and no work was done at this location. Mr. Peterson submitted an application to the Idaho Department of Water Resources, dated October 25, 2000, to construct dikes on the east side of Silver Creek at the location of the existing unauthorized fill. IDWR forwarded a copy of this application to us (NWW No. 012200320), however, Mr. Peterson eventually withdrew the application after we requested additional information.

END

Robert K. Flowers
Regulatory Project Manager